IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(***Special Original Jurisdiction***)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO: 12126 of 2005

Between:

M.Shankar, s/o M.Narsimha,
r/o Cherlapally Village, Nalgonda Mandal & District.

..... PETITIONER

AND

1 The Commissioner, Panchayat Raj, Urdu Hall Lane,

Himayathnagar, Hyderabad.
2 The District Collector, Nalgonda, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in not passing appropriate orders on the interim application moved by the petitioner in appeal being C.No.7198/CPR/D1/2005 on the file of the 1st respondent as arbitrary, illegal and consequently direct the 1st respondent to hear and dispose off the interim application of the petitioner in appeal being C.No.7198/CPR/D1/2005.

Counsel for the Petitioner: MR.D.JAGAN MOHAN REDDY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the stage of admission made the following **:** (order follows 2nd page)

O R D E R :

This writ petition is filed seeking to declare the action of the first respondent in not passing appropriate orders on his interim application filed in appeal C.No.7198/CPR/D1/2005 on the file of the first respondent, as arbitrary, illegal and consequently to direct the first respondent to hear and dispose of his interim application.

The case of the petitioner is that he contested for the post of Sarpanch, Cherlapally Gram Panchayat, Nalgonda district and was elected as Sarpanch from Telugu Desam Party. Since the date of assuming charge of the post of Sarpanch, he has been discharging his duties with anunblemished record.

On 2-7-2004 the second respondent issued show cause notice under section 249 (6) of A.P. Panchayat Raj Act, 1994 to the petitioner placing him under suspension on the ground of misappropriation. Pursuant to the show cause notice, the petitioner submitted his explanation on 19-7-2004 refuting the charges made against him. Thereafter submission of the aforesaid explanation, another show cause notice was issued on 11-8-2004 with two new charges along with the charges, which were mentioned in the show cause notice dated 02-7-2004. In pursuance to the show cause notice dated 11-8-2004, the petitioner submitted his explanation on 04-9-2004 seeking fortnight time to submit his detailed explanation. To his utter surprise, the second respondent while exercising his power under section 249 (6) of AP Panchayat Raj Act, 1994 issued impugned Proceedings No.491/04-A1 (Pts) dated

25-9-2004 placing him under suspension.

Questioning the Proceedings No.491/04-A1 (Pts) dated 25-9-2004, the petitioner filed WP.No.18530 of 2004 before this court. After hearing both sides, this court while setting aside the impugned proceedings, disposed of WP.No.18530 of 2004 on 29-12-2004 directing the second respondent therein to consider his explanation and pass orders afresh within one week. Thereafter, the second respondent directed the Divisional Panchayat Officer, Nalgonda to record his findings on his explanation. To his utter surprise, the second respondent without taking appropriation decision under section 249 (6) of the Act, issued a show cause notice on 29-3-2005 asking him to submit his explanation as to why he should not be removed from the post of sarpanch on the charges leveled against him. Again on 29-3-2005, the second respondent issued another show cause notice as to why misappropriated amount should not be recovered and directed to submit his explanation. Thereupon, the petitioner submitted a copy of explanation, which was filed during the proceedings under section 249 (6) along with a covering letter dated 11-4-2005 and also another representation by enclosing a similar copy of explanation on 19-4-2005. But the second respondent without taking into consideration exercised his powers under section 249 (1) of the Act and passed the impugned order placing him under suspension and also to recover the alleged misappropriated amounts.

It is further submitted that the impugned order discloses that the second respondent has passed the impugned order only on the basis of findings recorded by the District Panchayat Officer, which amounts to sub-delegation of powers in the absence of any power conferred upon the second respondent under any statutory provisions.

Aggrieved by the impugned order dated 28-4-2005 issued by the second respondent, the petitioner filed an appeal under section 249 (7) of the Act on 26-5-2005 in C.No.7198/CPR/D1/2005 before the first respondent. Though the matter was taken up by the first respondent but no orders were passed on the application filed by him seeking suspension of the orders dated 28-4-2005.

After hearing the learned counsel appearing for the petitioner as well as the learned Govt.Pleader for Panchayat Raj and Rural Development, without going into the merits of the impugned proceedings, I deem it appropriate to direct the first respondent to consider and dispose of the appeal filed by the petitioner by taking into consideration the explanations submitted by him, within six weeks from the date of receipt of a copy of this order and pass appropriate order on merits and in accordance with law by affording reasonable opportunity to the petitioner to substantiate his redressal of grievance.

With the above direction, the writ petition is disposed of at the admission stage. No costs.

JUNE 10th, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

To

1 The Commissioner, Panchayat Raj, Urdu Hall Lane, Himayathnagar,

Hyderabad.

2 The District Collector, Nalgonda, Nalgonda District.

3 Two C.Cs. to G.P. for Panchayat Raj and Rural Development, High

Court Buildings, High Court of A.P., Hyderabad (OUT)

4 Two CD Copies.

5 1 CC to MR.JAGAN MOHAN REDDY